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United Nations Commission on International Trade Law

Working Group V (Insolvency Law)
Twenty-sixth session
New York, 13-17 May 2002

Provisional Agenda

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2. Election of officers
3. Adoption of the agenda
4. Preparation of a legislative guide on insolvency law
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Notes on the provisional agenda

Item 1. Opening of the session

1. The twenty-sixth session of the Working Group will be held at the United Nations Headquarters, in New York, from 13 to 17 May 2002. There will be 5 formal working days for consideration of the agenda. Except on Monday, 13 May 2002, when the session will commence at 10.30a.m., meeting hours will be from 10.00 to 1.00 and from 15:00 to 18:00.

2. The Working Group on Insolvency Law is composed of all States members of the Commission: Austria, Benin, Brazil, Burkina Faso, Cameroon, Canada, China, Colombia, Fiji, France, Germany, Honduras, Hungary, India, Iran (Islamic Republic of), Italy, Japan, Kenya, Lithuania, Mexico, Morocco, Paraguay, Romania, Russian Federation, Rwanda, Sierra Leone, Singapore, Spain, Sudan, Sweden, Thailand, The former Yugoslav Republic of Macedonia, Uganda, United Kingdom of Great Britain and Northern Ireland, United States of America and Uruguay (which alternates annually with Argentina).

Item 2. Election of officers

3. The Working Group, in accordance with its practice at previous sessions, may wish to elect a Chairman and a Rapporteur.

Item 4. Preparation of a legislative guide on insolvency law

4. The Commission, at its thirty-second session (1999), had before it a proposal by Australia (A/CN.9/462/Add.1) on possible future work in the area of insolvency law. That proposal had recommended that, in view of its universal membership, its previous successful work on cross-border insolvency and its established working relations with international organizations that have expertise and interest in the law of insolvency, the Commission was an appropriate forum for the discussion of insolvency law issues. The proposal urged that the Commission consider entrusting a working group with the development of a model laws on corporate insolvency to foster and encourage the adoption of effective national corporate insolvency regimes.

5. Recognition was expressed in the Commission for the importance to all countries of strong insolvency regimes. The view was expressed that the type of insolvency regime that a country had adopted had become a “front-line” factor in international credit ratings. Concern was expressed, however, about the difficulties associated with work on an international level on insolvency legislation, which involved sensitive and potentially diverging socio-political choices. In view of those difficulties, the fear was expressed that the work might not be brought to a successful conclusion. It was said that a universally acceptable model law was in all likelihood not feasible and that any work needed to take a flexible approach that would leave options and policy choices open to States. While the Commission heard expressions of support for such flexibility, it was generally agreed that the Commission could not take a final decision on committing itself to establishing a working group to develop model legislation or another text without further study of the work already being undertaken by other organizations and consideration of the relevant issues.

6. To facilitate that further study, the Commission decided to convene an exploratory session of a working group to prepare a feasibility proposal for consideration by the Commission at its thirty-third session. That session of the Working Group was held in Vienna from 6 to 17 December 1999.

7. At its thirty-third session in 2000 the Commission noted the recommendation that the Working Group had made in its report (A/CN.9/469, para. 140) and gave the Group the mandate to prepare a comprehensive statement of key objectives and core features for a strong insolvency, debtor-creditor regime, including consideration of out-of-court restructuring, and a legislative guide containing flexible approaches to the implementation of such objectives and features, including a discussion of the alternative approaches possible and the perceived benefits and detriments of such approaches.

8. It was agreed that in carrying out its task the Working Group should be mindful of the work under way or already completed by other organizations,

including the World Bank, the International Monetary Fund (IMF), the Asian Development Bank (ADB), INSOL International (INSOL) (an international federation of insolvency professionals) and Committee J of the Section on Business Law of the International Bar Association (IBA). In order to obtain the views and benefit from the expertise of those organizations, the Secretariat, in cooperation with INSOL and the IBA organized the UNCITRAL/INSOL/IBA Global Insolvency Colloquium in Vienna, from 4-6 December 2000.

9. At its thirty-fourth session in 2001, the Commission had before it the report of the Colloquium (A/CN.9/495).

10. The Commission took note of the report with satisfaction and commended the work accomplished so far, in particular the holding of the Global Insolvency Colloquium and the efforts of coordination with the work carried out by other international organizations in the area of insolvency law. The Commission discussed the recommendations of the Colloquium, in particular with respect to the form that the future work might take and interpretation of the mandate given to the Working Group by the Commission at its thirty-third session. The Commission confirmed that the mandate should be widely interpreted to ensure an appropriately flexible work product, which should take the form of a legislative guide. In order to avoid the legislative guide being too general or too abstract to provide the required guidance, the Commission suggested that the Working Group should bear in mind the need to be as specific as possible in developing its work. To that end, model legislative provisions, even if only addressing some of the issues to be included in the guide, should be included as far as possible.

11. The twenty-fourth session of the Working Group on Insolvency Law, which was held in New York from 23 July to 3 August 2001, commenced consideration of this work with the first draft of the legislative guide on insolvency law. The report of that meeting is contained in document A/CN.9/504. Work continued at the twenty-fifth session in Vienna from 3-14 December 2001. The report of that meeting is contained in document A/CN.9/507.

12. The Working Group will have before it, and may wish to use as a basis for its deliberations, a Note by the Secretariat: "Draft legislative guide on insolvency law: recommendations" (A/CN.9/WG.V/WP.61). That document sets forth recommendations which have been revised in the light of the discussion of the Working Group at its twenty-fifth session. A complete version of the draft Legislative guide on insolvency law, including the both Commentary and Recommendations, will be prepared for consideration by the Working Group at its twenty-seventh session in December 2002.

13. Background materials may be found in the following documents: Possible future work on insolvency law: Note by the Secretariat A/CN.9/WG.V/WP.50; Reports of the Secretary-General A/CN.9/WG.V/WP.54 and addenda 1 and 2; A/CN.9/WG.V/WP.55; A/CN.9/WG.V/WP.57; A/CN.9/WG.V/WP.58; A/CN.9/WG.V/WP.59; Report of the Working Group on Insolvency Law on the work of its twenty-second session (1999) A/CN.9/469; Report on the UNCITRAL/INSOL/IBA Global Insolvency Colloquium (2000) A/CN.9/495; Report of UNCITRAL on the work of its thirty-fourth session (2001) A/55/17; Report of the Working Group on Insolvency Law on the work of its twenty-fourth session

(July/August 2001) A/CN.9/504; and its twenty-fifth session (December 2001) A/CN.9/507. These working papers may be found on the UNCITRAL website www.uncitral.org under “Working Groups” and then “Working Group on Insolvency Law”; the reports may be found under documents relating to the relevant session of the Commission.

Item 5. Other business

14. A further session of the Working Group has tentatively been scheduled for 9-13 December 2002 (5 days) in Vienna.

Item 6. Adoption of the report

15. The Working Group may wish to adopt, at the close of its session, a report for submission to the thirty-fifth session of the Commission (June 2002, in New York). The Working Group may wish to note that, consistent with decisions taken by the Commission at its thirty-fourth session (see A/56/17, para. 381), the Working Group is expected to hold substantive deliberations during the first nine half-day meetings (that is, from Monday to Friday morning), with a draft report on the entire period being prepared by the Secretariat for adoption at the tenth and last meeting of the Working Group (on Friday afternoon).

Dates and scheduling of meetings

16. The session of the Working Group will take place from 13 to 17 May 2002 at the United Nations Headquarters, New York. There will be five working days available for consideration of the agenda items at the session. Meeting hours will be from 10.00 to 13.00 and from 15:00 to 18:00, except on Monday, 13 May 2002, when the session will commence at 10.30 a.m..